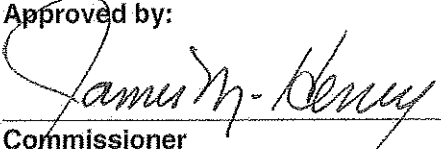
 <p style="text-align: center;">POLICIES AND PROCEDURES</p> <p style="text-align: center;">State of Tennessee Department of Intellectual and Developmental Disabilities</p>	<p>Policy # P-300</p>	<p>Page 1 of 4</p>
<p>Policy Type: Administrative, Community/Waiver and Department of Intellectual and Developmental Disabilities (DIDD) Intermediate Care Facilities for Persons with Intellectual Disabilities (ICFs/ID)</p>	<p>Effective Date: January 4, 2012</p>	
<p>Approved by:  Commissioner</p>	<p>Supersedes: N/A</p> <p>Last Review or Revision: N/A</p>	
<p>Subject: Exemption Policy</p>		

- I. **AUTHORITY:** TCA 4-3-2701, TCA 4-3-2708; TCA 4-4-103; TCA 33-1-201 and TCA 33-1-303.
- II. **PURPOSE:** To provide a structured mechanism by which an exemption from a policy, procedure, other written document or instrument may be requested and approved.
- III. **APPLICATION:** DIDD Commissioner, Deputy Commissioners, Assistant Commissioners, Regional Office Directors, Health Services Director, Chief Officers, DIDD ICF/ID Directors/Chief Officers, other DIDD management staff and all contracted entities responsible for implementing DIDD and TennCare policies, procedures, other written document or instrument.
- IV. **DEFINITIONS:**
 - A. **Circle of Support (COS)** shall mean a group of people who meet together on a regular basis to help a person supported plan for and accomplish his/her personal outcomes and actions. The person supported is the focus or the center of the COS. At a minimum, this includes the person supported, his/her family member(s) and/or conservator(s), Case Manager, and the providers of any supports and services that the person receives. Friends, advocates, and other non-paid supports are included at the invitation of the person.
 - B. **Discretionary Rate Review (DRR)** shall mean the process the provider uses to request a review of a reimbursement rate determination when there is additional data to support the original request.
 - C. **Individual Support Plan (ISP)** shall mean a person-centered document that provides an individualized, comprehensive description of the person supported as well as guidance for achieving unique outcomes that are important to the person in achieving a good quality of life in the setting in which they reside.
 - D. **Opportunity to Request Review (ORR)** shall mean the process the provider uses to request a review of an audit finding and to present additional information.
- V. **POLICY:** DIDD shall maintain a structured mechanism for allowing exemptions to policy, procedures, other written documents or instrument as specified through the following processes. DIDD shall maintain a record of all approved requests for trend analysis purposes. Annually, that

Effective January 4, 2012	Policy P-300	Page 2 of 4
Subject: POLICY EXEMPTION POLICY		

information shall be used to determine if revisions to policies, procedures, other written documents or instruments are necessary. The Commissioner of the Department shall be the sole approving authority for all exemptions.

VI. PROCEDURES:

- A. Requests for exemptions shall be submitted electronically using an Exemption Request Form. All exemption requests shall be submitted to the appropriate DIDD management staff. Final approval of an exemption shall granted solely by the Commissioner of DIDD.
- B. If the request for an exemption is originated by a contracted provider, it shall be submitted to the regional director of the region where the provider operates. If the provider is asking for an exemption in more than one region, each regional director where the exemption is requested shall review the request. The regional director(s) shall make a (joint) recommendation to the Deputy Commissioner of Program Operations for approval or denial. The Deputy Commissioner who receives the exemption shall make a determination as to whether to support further consideration of the exemption or to deny the exemption. If denied, the Exemption Request Form shall be returned to the originating entity with the reasons for the denial. A copy of the exemption forms whether an approval or denial will be maintained in the Policy Division for reference.
 1. Any exemption request that involves the lessening of requirements with the potential to create risk for a person receiving services, (e.g., staffing changes) shall include a plan to keep the person safe and ameliorate the situation which necessitates the request for an exemption.
 2. The person's COS must agree with the request for the exemption and documentation of this agreement must be submitted with the request. Any plan developed as part of this process must be available for all DIDD investigators/monitors and/or TennCare staff to review. If an incident occurs or an investigation is initiated that is related to the approved exemption, a review of the plan shall be conducted during the agency's Incident Management Committee. This review shall include a determination concerning the on-going appropriateness of the exemption.
 3. If the exemption request is to increase a DIDD support such as a housing subsidy, the COS must consider alternatives that will decrease the need for the increase request and document those alternatives as part of the request.
- C. If the request for an exemption is from an internal DIDD policy, procedure other written document or instrument the Deputy Commissioner of Policy and Innovation shall review the request and make a recommendation for approval or return to the requesting entity as a denial.
- E. The Office of General Counsel shall review all exemption requests as defined in B or C above that are recommended for approval by a Deputy Commissioner prior to presentation to the Commissioner of DIDD for final and conclusive determination.
- F. If the Office of General Counsel has determined the request will not violate any rules, laws, the TennCare/DIDD provider agreement, or other legal requirements the request and supporting information shall be forwarded to the Commissioner of DIDD for final recommendation.

Effective January 4, 2012	Policy P-300	Page 3 of 4
Subject: POLICY EXEMPTION POLICY		

- G. If the request for an exemption involves more than one office or division of DIDD (e.g., Program Operations and Protection from Harm), both Deputy Commissioners shall jointly review and make a recommendation to approve or deny the request for an exemption. If the Deputies cannot agree on a recommendation, the request shall be referred to the Commissioner of DIDD for final decision after the Office of General Counsel has reviewed the request and determined that it could be approved.
- H. If the exemption request involves a policy that TennCare has reviewed and approved, the appropriate Deputy Commissioner shall, after review by the Office of General Counsel, consult with TennCare for approval. These reviews shall occur prior to the presentation to the Commissioner of DIDD for determination. Any additional requirements TennCare may place on the approval of an exemption must be documented. The requirements must be relayed to the requesting entity by the DIDD staff who obtained TennCare approval. These requirements must be agreed to and implemented by the requesting entity and COS as applicable. Changes in documentation or planning required as a result of TennCare's review must be received and approved by the responsible Deputy Commissioner and Office of General Counsel prior to submission to the Commissioner of DIDD for a final decision.
- I. The signed Policy and Procedure Exemption Request Form shall be returned to the requesting entity with an expiration date of no more than one (1) calendar year from final approval of the exemption. This signed form may contain specific contingencies as the exemption is implemented. The implementation of these contingencies shall be documented by the entity requesting the exemption and maintained with the exemption request for review by any monitoring/investigative body.
- J. Any exemption approved that impacts a person receiving services, shall be reviewed and reapproved by the person's COS at the annual ISP planning meeting and must be re-requested if the approval and implementation date is prior to the beginning of the information gathering phase of ISP development has begin. This is approximately ninety (90) days prior to the ISP effective date.
- K. At the expiration date, the exemption shall automatically expire unless a continuation of the exemption has been granted. It is the responsibility of the entity requesting the exemption to request continuation of the exemption, and provide supporting documentation for continuation prior to the exemption expiration date. This continuation shall follow the process outlined above for a new exemption. If a signed exemption request form is not obtained and present at the site, the exemption is considered expired and current policies, procedures or other written guidelines will be enforced by any monitoring entity.
- L. It is the responsibility of the entity requesting/receiving the exemption to maintain a copy of the exemption for DIDD or other monitoring entities to have access upon request.
- M. The Policy Division shall maintain a copy of all approved Policy Exemption Request Forms for future policy revision purposes. An annual report summarizing Policy Exemptions will be presented to the Policy Committee based on fiscal year by August 31. Determinations will be made concerning the need for revisions to policies based on the evidence from the analysis of exemptions granted.

Effective January 4, 2012	Policy P-300	Page 4 of 4
Subject: POLICY EXEMPTION POLICY		

- N. All approved policy and procedure exemption requests shall automatically expire upon issuance of a new policy that supersedes the one under which the exemption was granted. If an exemption is still needed, a new exemption must be requested. It is the responsibility of the entity that originated the initial exemption to ensure compliance with this policy. The initiation of a review to determine the necessity of continuing the exemption shall begin within thirty (30) calendar days of issuance of the new policy. If COS re-review and re-approval is required, a COS meeting shall be held within that thirty (30) day frame. All documentation required for an initial exemption shall be resubmitted to the appropriate Deputy Commissioner within forty-five (45) days for approval.
- O. Final approval or denial of the request shall occur within forty-five (45) days or receipt of the request by the Deputy Commissioner.
- P. DIDD reserves the right to revoke an approved exemption request at any time for any reason.
- Q. Exemptions shall not be granted for the following circumstances:
 - 1. When there are alternative avenues to resolve the issue (e.g., hearings under the Uniform Administrative Procedures Practices Act, Opportunity to Request Review (ORR), Discretionary Rate Review (DRR), and Complaint Resolutions) are available.
 - 2. For Protection from Harm requirements.
 - 3. When any state or federal law, TennCare or DIDD rule, policy or regulation is involved.
 - 4. For any program requirements for Home and Community Based Services (HCBS) waivers.
 - 5. Any exemptions that would violate any court orders or settlement agreements that involve DIDD, TennCare or the State of Tennessee.

VII. **ATTACHMENTS:**

- A. Policy Exemption Request form

DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

EXEMPTION REQUEST FORM

To be submitted electronically

Date:

To:

From:

Request for exemption from Applicable Policy /Procedures, written document or instrument:

1. For what is the exemption being requested?
2. How long is the exemption to continue?
3. Is this request for a single circumstance or a blanket request?
4. What other solutions were sought before this exemption was requested?
5. If this request impacts requirements that have the potential for harm to a person served, what is the plan to ensure the person's safety?
6. Is an alternative solution being developed to eliminate the need for the exemption? If so, what? If not, why not?
7. If applicable, is the Circle of Support in agreement with this request?

If Community, Regional or DIDD ICF/ID request, Regional Director comments/recommendation:

Deputy Commissioner's comments/recommendations:

Office of General Counsel's comments/recommendations:

Commissioner's comments:

Exemption Granted: Y_____ N_____

Exemption Approval Date: _____ Exemption Expiration Date _____

Additional Requirements for approval:

Commissioner of DIDD

Date